Office-Supreme Court, U.S.
FILED
MAY 19 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-1472

In the Supreme Court of the United States

OCTOBER TERM, 1982

MARK J. KENT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends that Customs officers lacked reasonable suspicion to stop and board his vessel in an intracoastal waterway and that evidence seized as a result of those procedures should have been suppressed.

1. After a bench trial in the United States District Court for the Southern District of Florida, petitioner was convicted of possession of marijuana with intent to distribute it, in violation of 21 U.S.C. 841(a)(1).[1] He was sentenced to two and one-half years' imprisonment, to be followed by a two-year special parole term. The court of appeals affirmed (Pet. App. 4a-18a).

a. The evidence at trial showed that on March 7, 1980, petitioner was transporting a load of marijuana aboard the yacht SUNDANCER. At approximately 4:30 p.m., a Customs Patrol officer in Miami learned from a confidential

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[1]Petitioner was acquitted of conspiring to commit that offense (21 U.S.C. 846).

informant that a white 50-foot yacht with three persons on board would be entering the Coral Gables Waterway within an hour. According to the informant, this vessel had a load of marijuana on board (Pet. App. 5a). In response, the Customs Patrol immediately launched a vessel, which proceeded to the waterway. At about 5:15 p.m., Customs Officer Brookins spotted the SUNDANCER and observed that it matched the informant's description in every respect, including the number of persons aboard (*ibid.*). Officer Brookins observed the SUNDANCER for some 30 minutes. No other vessels were in the area during this time (*ibid.*; Tr. 69). At that point, the Customs vessel drew alongside the SUNDANCER, and officer Brookins asked the captain, later identified as petitioner, about the vessel's origin and destination. Petitioner said only that the ship was coming from the West Palm Beach area; he did not say where he intended to dock (Pet. App. 5a). Officer Brookins believed that petitioner's answer was inconsistent with the ship's heading (*ibid.*; Tr. 48, 62). As a result, Brookins decided to board the SUNDANCER to check the vessel's documents and cargo. Petitioner agreed and stopped his ship (Pet. App. 5a-6a; Tr. 13-14).

Officers Brookins and Carlin boarded the SUNDANCER and went to the pilot house, where two other persons were standing (Tr. 15). Brookins asked for the ship's documents, but petitioner could not produce them (Pet. App. 6a). While in the pilot house, Officer Carlin looked into the main salon area through an open doorway (*ibid.*; Tr. 16, 75, 83). In order to ensure that no one else was on board, Carlin took one or two steps down the stairs and bent down slightly to see past a partially closed partition above the doorway (Pet. App. 6a, 16a & n.14). Instead of other persons, he saw several large bales wrapped in burlap. Recognizing that the bales were characteristic of marijuana, Carlin descended

into the salon and discovered that both of the ship's staterooms were completely filled with marijuana bales (*id.* at 6a; Tr. 126-127, 129). The two officers then arrested petitioner and the others on board.

b. Prior to trial, petitioner moved to suppress the results of Officer Carlin's discovery. Petitioner argued, *inter alia*, that the Customs officers lacked reasonable suspicion to stop and board his vessel. The district court disagreed, and the court of appeals affirmed. The court below concluded that the informant's tip, coupled with the officers' corroboration of its details, furnished reasonable suspicion for the stop and boarding of the vessel in inland waters (Pet. App. 6a-12a). The court of appeals also held that Officer Carlin acted properly in entering the salon of the ship (*id.* at 13a-18a).

2. Petitioner contends (Pet. 3-5) that the officers lacked reasonable suspicion to believe that the SUNDANCER was engaged in criminal activity and that, as a result, the stop and boarding of the vessel violated his Fourth Amendment rights.[2] However, the decision below is correct and does not conflict with any decision of this Court or of any other court of appeals. Further review is therefore unwarranted.

First, contrary to petitioner's claim (Pet. 4), the stop and boarding here was not based solely on an uncorroborated informant's tip. Instead, as the court below pointed out (Pet. App. 9a), after the officers received the information, they conducted an independent investigation and corroborated key details of the tip. In addition, the tip described petitioner's vessel in detail and gave its exact location at a specific time. While a tip concerning the whereabouts of an

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[2]The petition does not present the issue whether, assuming the boarding was lawful, the brief inspection of the salon disclosing the marijuana bales was separately improper. We accordingly do not address that question here.

automobile may not always serve to show the reliability of an informant's information, the same is not true in the case of vessels. Since navigable waters are not confined to specific defined paths, and whereas persons on the street with no knowledge of criminal activity may easily observe a vehicle's location and convey that information to the authorities, the location of a vessel not in port is not "readily available to many persons" (*United States* v. *McLeroy*, 584 F.2d 746, 748 (5th Cir. 1978)). Because the informant possessed such knowledge, the officers were entitled to infer that he had come upon his information in a reliable manner. See *Adams* v. *Williams*, 407 U.S. 143, 145-146 (1972); *Draper* v. *United States*, 358 U.S. 307 (1959). The officers were also entitled to take into account petitioner's evasive response to Officer's Brookins' inquiry concerning the SUNDANCER's course. And Officer Brookins observed that petitioner's statement was inconsistent with the SUNDANCER's heading when it was first sighted. Taken together, these facts created a reasonable suspicion of illegal activity, as the courts below held. In any event, that fact-bound conclusion does not warrant review by this Court.

The decision in *United States* v. *Villamonte-Marquez*, 652 F.2d 481 (5th Cir. 1981), cert. granted, 457 U.S. 1104 (1982), on which petitioner relies (Pet. 3-5), is not to the contrary. In that case, an informant told the authorities only that two boats with foreigners and marijuana on board would be found in the area of Hackberry and Cameron, Louisiana. The informant could not describe the vessels or give their locations (652 F.2d at 482), and the court of appeals thus held that the tip, together with other observations that the court viewed as essentially innocuous, did not provide reasonable suspicion for the vessel's boarding. *Id.* at 487-488. Here, by contrast, the informant's tip specifically described petitioner's vessel and gave its precise location. Hence, the tip in the instant case was properly credited

and furnished reasonable suspicion for the boarding of the SUNDANCER.[3]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

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[3]In our petition in *Villamonte-Marquez* (No. 81-1350, 1982 Term), we did not raise the question of the validity of the Fifth Circuit's determination that the informant's tip and officers' observations did not furnish reasonable suspicion for the boarding of respondents' vessel. Nonetheless, we pointed out (Pet. 11 n.6) that we disagreed with the court of appeals' ruling on that question. There is no need, however, to hold the instant case for *Villamonte-Marquez*. That case involves the question whether *any* cause is required to board a vessel in inland waters for the purpose of checking its documents. Here, reasonable suspicion was present.